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CIPD Applied Research Conference 2015

The shifting landscape of work and working lives

Workplace Mediation – Transforming the Culture of Conflict Management?

Conference paper

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Workplace mediation – transforming the culture of conflict management?

In 2007, the Gibbons Review of the UK's system of dispute resolution recommended workplace mediation as a way of encouraging early resolution of individual employment disputes. As a consequence, the Acas Code of Practice was revised in 2009 to include a reference to the benefits of mediation. Additionally, in the context of rising employment tribunal volumes, the Government enthusiastically endorsed the use of mediation and perhaps most strikingly argued that *'a significant growth in mediation of workplace disputes has the potential to lead to a major and dramatic shift in the culture of employment relations'* (BIS 2011, p13).

Since then, there is some evidence that mediation has increased, although it is far from becoming *'embedded in the culture of conflict handling'* in most UK workplaces (van Wanrooy et al 2013, p27). The Workplace Employment Relations Survey 2011 found that 17% of workplaces that had formal employee grievances had used mediation. A 2015 CIPD survey of their members reported that in-house mediation was used in 24% of organisations, and external mediation in 9% (CIPD 2015, p11). Moreover, the use of in-house and external mediation increased by 24% and 32% respectively. At the same time, almost four in ten organisations had expanded their development and use of mediation skills (CIPD 2015, p14).

Typically, the case for mediation has been driven by efficiency claims, and there is consistent evidence that it provides a relatively cheap, fast and successful way of resolving certain types of disputes, particularly when compared with grievance and disciplinary procedures and litigation. However, our research suggests that the transformative powers of mediation proposed by the Government are less evident, and appear to be influenced by the way mediation is introduced and a range of organisational factors.

Mediation and its effects

It is important to understand what mediation is. It is defined by Acas and the CIPD as:

'where an impartial third party, the mediator, helps two or more people in dispute to attempt to reach an agreement' (Acas/CIPD 2013, p8).

While many different practices are labelled by practitioners as mediation, we would distinguish between ad hoc *'facilitated discussions'* undertaken by a single manager or HR professional, and *'mediation'* that is conducted by a trained and accredited mediator. The defining feature of mediation is that the individuals involved in the dispute take ownership over both the problem and its solution. Furthermore, participation should be voluntary, and what is discussed and agreed during mediation is normally confidential (Acas/TUC 2010). Mediation of this type can be bought in by an external specialist or provided through an *'in-house'* service whereby operational staff are trained and act as mediators in addition to their normal role (Latreille 2011).

To date, mediation has mainly been promoted on the basis of its efficiency advantages over conventional grievance and disciplinary procedures. Mediation can be organised relatively quickly and does not require input from managers, representatives or witnesses. It is also likely to result in a positive agreement, although the sustainability of settlements is more difficult to evidence. Consequently it can also reduce the costs of long-term absence, staff turnover and litigation (Latreille and Saundry 2014).

| Key advantages | Key challenges |
|--|--|
| <ul style="list-style-type: none"> ▪ High rates of resolution and satisfaction ▪ Saves time for employer, employees, colleagues ▪ Reduces stress and chances of long-term absence ▪ More likely to repair relationships, reducing staff turnover ▪ Reduces costs ▪ Gives disputants control over outcomes ▪ Enhances relationships and working environment ▪ Staff can express concerns in 'safe' space <p>(Acas 2011, 2012; Acas/CIPD 2013; Berggren 2006; Fox 2005; Goldberg 2005; Seargeant 2005)</p> | <ul style="list-style-type: none"> ▪ Employees may feel obliged to take part, reducing chances of success ▪ Tends to be used as a last resort, reducing effectiveness ▪ Sustainability of agreements is questioned ▪ Can be seen as a threat to managerial authority ▪ Not seen as suitable for all cases, that is, disciplinary and discrimination ▪ Power imbalances between the disputants <p>(Acas/CIPD 2013; Acas 2011, 2012; CIPD 2008; Colling 2004; Mareschal 2002; Saundry et al. 2013; Seargeant 2005; Sherman 2003; Wiseman and Poitras 2002)</p> |

There is also substantial evidence of the positive impacts on the conflict resolution skills of those who are trained as mediators and those who take part in mediation, particularly managers (Latreille and Saundry 2014). However, whether this can trigger more fundamental changes at the level of the organisation is much less clear.

Can mediation transform organisations?

To date there is relatively little evidence that mediation can have a transformative impact. Perhaps the most notable study comes from the USA, where Bingham et al's (2009, p44) examination of the US Postal Services REDRESS mediation scheme found that it had a positive impact on the 'workplace climate', as it improves communication skills and behaviours, and there was a reduction in formal complaints. Seargeant's (2005) evaluation of mediation in small firms in the UK found evidence of a sustained improvement in employer–employee relationships. It has been argued these wider benefits are more likely when organisations introduce complementary alternative dispute resolution (ADR) practices (Bendersky 2003) as part of an overall strategic approach. Of course, this is more likely to be possible where organisations develop their own in-house mediation schemes (Saundry et al 2013).

However, the likelihood of securing these wider benefits is influenced by the attitudes, behaviours and actions of key organisational people and crucially the nature of workplace relations. Resistance to workplace mediation may come from managers, HR and trade unions. The support and buy-in of line managers is seen as essential if mediation is to become established within organisations (Latreille 2011). However, managers may also feel that it undermines their authority to manage. Saundry et al (2013) found that managers were particularly resistant where the mediation involved a challenge to their decisions or attempts to address performance. They were often reluctant participants and felt compelled to take part in mediation by more senior managers. Similarly, it may be seen to undermine the role of HR professionals in conflict resolution and in particular their oversight of discipline and grievance (Lipsky et al 2003). Trade unions have also traditionally been sceptical about ADR, which they see as threatening their traditional representative role.

Mediation case studies

We explored the potential of mediation to transform employment relations through a series of three case studies, funded by Acas, of organisations that had developed in-house mediation schemes. These were all large companies – organisation A in health care, organisation B providing services in the private sector and organisation C delivering public administration. Each of the three organisations claimed that mediation had provided significant direct benefits. Over 90% of the mediations resulted in agreement, and mediation was reported to help rebuild relations between the disputants, and at a lower cost and more quickly than disciplinary and grievance procedures. Respondents believed that mediation was both more effective and efficient than traditional formal procedures. Additionally, involvement in mediation appeared to have had a positive impact on the way in which operational managers perceived and handled conflict. They were more inclined to listen and to explore resolutions with employees, and to refer subordinates to mediation.

However, evidence as to whether these benefits had been felt at the level of the organisation was mixed.

Organisation A – there was clear evidence that the introduction of an internal mediation scheme had facilitated the development of a more trusting, informal and collaborative approach. Prior to the scheme, conflict-handling was confrontational with a reliance on the application of procedure and little or no use of informal processes of resolution. Importantly, the organisers of the new scheme decided to invite trade union representatives to train as mediators and also to be involved in the management of the scheme. The training process provided an opportunity for representatives, senior operational managers and HR practitioners to share experiences and understand each other's perspectives. Relationships formed during training provided a basis for informal processes of conflict resolution, as the parties were more willing to try to find solution through discussion rather than going straight to procedure.

Organisation B – there was little evidence of wider impacts on conflict management in organisation B, in which a new mediation service had been located solely within the HR function. Neither employee representatives nor operational managers had been trained as mediators. Mediation had been effective in resolving specific disputes and had shaped the attitudes of mediation participants. However, there was limited awareness of the service, and a considerable degree of uncertainty about the usefulness of mediation among most operational managers. Many managers were concerned that mediation could threaten their authority, as decision-making could be taken 'out of their hands' by employees. The confidential nature of the outcome of the mediation could exacerbate this issue. Many managers also believed that if their staff required mediation, this was, or would be perceived as, a reflection of their inability to manage conflict effectively. Therefore, there was a reluctance to refer cases.

Organisation C – there was a longstanding mediation service which, while successful in resolving specific issues, had little wider impact. While a number of mediators had been initially trained and drawn from a wide range of organisational roles, a high drop-out rate meant that mediation was now conducted by a single member of staff. An additional pilot initiative to train a number of operational managers and trade union representatives as 'resolution officers' had a positive impact on those involved. They gained new skills and perspectives and also the confidence to pursue more informal approaches to conflict resolution. However, wider benefits were restricted because of funding constraints and the reluctance of the largest trade union to become actively involved. However, work done by Acas to encourage improved relationships between senior managers and

trade union representatives was seen to have developed a partnership and proactive approach to conflict management.

Factors shaping the wider impact of mediation

The findings suggest that the extent to which in-house mediation led to broader changes was largely influenced by whether it was developed as a strategic initiative. In organisation A, where the most significant impact was identified, the introduction of a mediation scheme was a strategic approach to reduce their grievance culture. It was championed by a senior manager who explicitly targeted trade union representatives to act as mediators and to co-ordinate the mediation scheme. It was anticipated that, as they often were the first point of contact for aggrieved staff, this would increase the likelihood of referrals. In addition, it was hoped that the union's involvement in mediation would change the way that union representatives approached individual disputes and facilitate a shift from an adversarial to a more co-operative approach. While a similar method was followed in organisation C, the failure to secure the active involvement of key union representatives limited positive impacts. Nonetheless, in both organisations A and C, mediation was developed in tandem with attempts to deepen partnership approaches to working and to encourage early and less formal approaches to dispute resolution.

In contrast, in organisation B, the prime motivation for the introduction of mediation and the rationale 'sold' to senior management primarily revolved around potential efficiency gains and the chance to resolve disputes more quickly and at a lower cost. In addition, as a non-unionised company, the quality of employment relations was not perceived (by management respondents at least) to be a major consideration. This was also reflected in the location of the mediation service, with training restricted to HR practitioners. Consequently mediation was seen as simply another 'tool' in HR's 'box'. This limited awareness more widely across the organisation. It also heightened resistance from line managers, who saw making a reference to mediation as indicating to HR that they had 'failed', and also triggering greater scrutiny from what was seen as 'head office'. Asking for an issue to be taken through the mediation scheme was therefore seen as a very serious step with significant implications.

Across the case studies, organisational size also appeared to affect the wider impact of the mediation scheme. In organisation A, there was around 1 mediator to every 300 staff, while there was just 1 mediator to every 3,000 staff within organisation B. Unsurprisingly, within organisation B, most operational managers were not aware of the mediation scheme, let alone whether it had any impact on their approach to conflict.

This was exacerbated by the nature of the HR function. In organisation A, conflict was generally handled by a relatively small group of union representatives and HR practitioners, most of whom were trained as mediators. This was impossible in organisations B and C, which were not only much larger organisations but in which responsibility for conflict management had been devolved to line and operational managers to a much greater extent.

Conclusion

The case studies discussed above suggest that the development of in-house mediation schemes can shape organisational approaches to conflict management; however, this is more likely where it is part of strategic intervention that recognises the importance of early and proactive conflict resolution. In addition, the impact of mediation will be greater when key staff from across the organisation are actively involved. Recruiting influential managers, HR and employee representatives to co-ordinate and carry out mediations can enhance understanding and provide an environment in which high-trust relationships between the parties can be developed, encouraging more informal resolution generally. It is important to note that in all three organisations, mediation provided a quicker, cheaper and, for some issues, a more effective response to individual disputes than conventional process and procedure. However, if mediation is simply seen as 'another HR tool', its potential to contribute to improved employment relations is unlikely to be unlocked.

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